

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA

v.

MARC T. DILULLO

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CRIMINAL ACTION

NO. 08-0761

HENRY S. PERKIN
UNITED STATES MAGISTRATE JUDGE

February 23, 2011

MEMORANDUM

On January 12, 2009, the defendant, Marc T. DiLullo, pled guilty to the unauthorized movement of plant pests, a violation of 7 U.S.C. §§ 7711(a) and 7734.¹ On April 7, 2009, I sentenced Mr. DiLullo to serve thirty-six (36) months probation and to pay a \$5,000.00 fine and a \$25.00 special assessment.²

By his *pro se* letter to the Court dated December 14, 2011, Mr. DiLullo requested “early release from [the] probation sentence.” I treated Mr. DiLullo’s letter as a motion and docketed the letter.³ By my Order of January 24, 2011, I directed the United States Attorney to respond to Mr. DiLullo’s request for early termination of probation.⁴ Both the United States

¹ Under the Plant Protection Act, a Plant Protection and Quarantine (“PPQ”) permit is required for the importation, interstate movement and environmental release of plant pests. It is unlawful to knowingly move any plant pest into or through the United States, or knowingly accept delivery of such a plant pest without a permit, unless the pest is dried or preserved.

² In Mr. DiLullo’s plea agreement, he agreed to pay the \$5,000.00 fine and the special assessment at or before the time of sentencing. It is my understanding that he complied with this portion of the sentence.

³ The letter was received by the Court on December 29, 2010 and docketed on December 30, 2010.

⁴ A copy of the Order was also provided to the United States Probation Office.

Attorney and Mr. DiLullo's Probation Officer recommend that I deny his request.⁵

Title 18 U.S.C. § 3564(c) authorizes the Court to grant early termination of probation for a misdemeanor in certain circumstances. That section provides:

The court, after considering the factors set forth in section 3553(a) to the extent they are applicable, may . . . terminate a term of probation previously ordered and discharge the defendant at any time in the case of a misdemeanor . . . if it is satisfied that such action is warranted by the conduct of the defendant and the interest of justice.

18 U.S.C. § 3564(c). The factors to be considered are:

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) the need for the sentence imposed . . .
 - (B) to afford adequate deterrence to criminal conduct;
 - (C) to protect the public from further crimes of the defendant; and
 - (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
- (4) the kinds of sentence and the sentencing range established for -
 - (A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines - [or]
 - (B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission ...
- (5) any pertinent policy statement
- (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty

⁵ The Probation Officer reported that Mr. DiLullo was in compliance with his terms of probation as of February 9, 2011.

of similar conduct; and

- (7) the need to provide restitution to any victims of the offense.

See 18 U.S.C. § 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7).

The decision to grant early termination of probation is within the sound discretion of the court. The United States Court of Appeals for the Second Circuit held in *United States v. Lussier*, 104 F.3d 32 (2d Cir. 1997), that changed, new or unforeseen circumstances such as exceptionally good behavior by a defendant could serve as a basis for a District Court's discretionary decision to modify supervised release. *Id.* at 36. Although the United States Court of Appeals for the Third Circuit acknowledged in *United States v. Kay*, 23 F. App'x. 944 (3d Cir. 2008), that it had not expressly set forth a "significantly changed or extraordinary circumstances" standard, the Court noted that district courts in this circuit have used *Lussier* as a guide to the exercise of discretion. *Id.* at 946 (citing *United States v. Guillatt*, No.Crim. A. 01-408, 2005 WL 589354, at *1 (E.D. Pa. Jan. 18, 2005)("early termination of probation should be ordered only in extraordinary circumstances"); *United States v. Williams*, No.Crim. A. 02-216, 2006 WL 618849, at *1 (E.D. Pa. 2006)(same); *United States v. Caruso*, 241 F. Supp.2d 466, 468-69 (D. N.J. 2003)(requiring a showing of "new or exceptional" circumstances warranting termination of probation); *United States v. Paterno*, No.Crim. A. 99-cr-037, 2002 WL 1065682, at *2 (D. N.J. 2002)(same)). *See also United States v. Rasco*, No. 88-817, 2000 WL 45438, at *3 (S.D.N.Y. Jan. 19, 2000)(decision to grant early termination in sound discretion of court; defendant has burden to demonstrate early termination is warranted); *United States v. Weintraub*, 371 F. Supp.2d 164, 166 (D. Conn. 2005)("Such relief is warranted only occasionally, when changed circumstances . . . will render a previously imposed term or condition of release either too harsh

or inappropriately tailored to serve the general punishment goals of section 3353(a)”) (quoting *United States v. Lussier*, 104 F.3d 32, 36 (2d Cir. 1997) (internal citations omitted)).

I have carefully considered the factors enumerated in 18 U.S.C. § 3553 as well as Mr. DiLullo’s statements at the time of sentencing. At his sentencing, both Mr. DiLullo and his counsel argued that the regulations of the Department of Agriculture he violated were without merit and that the large, human hand-sized insects imported by Mr. DiLullo would not endanger United States agriculture because the insects could not survive in the environment.⁶ In fact, the undisputed facts of the case revealed that one of the ten insects shipped from Taiwan to Mr. DiLullo without a PPQ permit escaped from its packaging and was missing within the United States Postal Service branch until found alive more than one day later. Mr. DiLullo’s statements raised serious questions as to his acceptance of responsibility for his illegal actions. Nevertheless, I chose to impose a sentence of probation, but felt that a significant period of supervision was appropriate to afford adequate deterrence to Mr. DiLullo’s future criminal conduct.

In his December 14, 2011 letter seeking early termination of his probation, Mr. DiLullo refers to the fact that he has been in full compliance with the terms of his probation for “twenty-one of the thirty-six month sentence” and that he has been in full compliance with its terms. He makes the early termination request so that he may move to Iowa and “start a new life for [himself].” Mr. DiLullo’s compliance with the terms of his sentence are commendable, but

⁶ The Coleoptera order of beetle is restricted from being imported into the United States without a PPQ permit from the United States Department of Agriculture due to the fact that the larvae feed on plant roots while the adults feed on the aerial portion of the plant, causing damage to the growing crops. *See* Information, Document No. 1, p. 1.

nothing less is expected, and “it is nothing more than what is required under the terms of defendant’s probation.” *United States v. Guillatt*, No. Crim.A. 01-408, 2005 WL 589354, at *1 (E.D. Pa. Jan. 18, 2005)(DuBois, J.)(citing *Karacsonyi v. United States*, 152 F.3d 918 *unpub. op.*, 1998 WL 401273, *1 (2d Cir. 1998)(“Full compliance, after all, is merely what is expected of all people serving terms of supervised release.”)).

Mr. DiLullo fails to meet his burden of showing evidence of any extraordinary conduct which might warrant early termination of his probation. While I appreciate that Mr. DiLullo wishes to start a new life, the need to serve the balance of his sentence of probation should not be an impediment to this goal as long as he obtains the necessary permissions from his Probation Officer. In any event, a desire to start a new life is not grounds for early release from probation. The plea agreement and sentence in this case afford Mr. DiLullo the ability to move on with his life with minimal intervention by the Court. Mr. DiLullo’s stated reasons show that he was and continues to be a good candidate for probation, but his statements do not provide the exceptional circumstances which would allow me to exercise my discretion in favor of an early termination.

An appropriate Order follows.

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ORDER

AND NOW, this 23rd day of February, 2011, upon consideration of the defendant's December 14, 2011 informal Motion for early termination of his probation (Document No. 19), and the Government's Response thereto (Document No. 21), and for the reasons set forth in the accompanying Memorandum,

IT IS HEREBY ORDERED that the Motion is **DENIED**.

BY THE COURT:

/s/ Henry S. Perkin

HENRY S. PERKIN

UNITED STATES MAGISTRATE JUDGE